REMARKS/ARGUMENTS

The Office Action of April 1, 2009, has been reviewed and these remarks are responsive thereto. No new matter has been added. Claims 1-51 remain pending upon entry of the present paper. Reconsideration and allowance of the instant application are respectfully requested.

A number of the pending claims have been amended merely to place them in a more preferred form. Such amendments to form are **not** to be interpreted as a disavowal of subject matter.

Claim Objections

Claims 4-5 and 30-31 stand objected to under 37 CFR 1.75(c) as being in improper form because multiple dependent claims should refer to claims in the alternative, and cannot depend from any other multiple dependent claim. The referenced claims have been amended so as to remove the multiple dependencies. As such, Applicants request withdrawal of the objection.

Claims 1-25 stand objected to due to the recitation of the term "procedure" therein. Pursuant to the Office Action at page 2, amended claims 1-25 are directed to a "method". Withdrawal of the objection is requested based on the amendments.

Claim Rejections under 35 U.S.C. § 101

Claims 26-50 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is traversed.

The Office Action at pages 2-3 contends that "a system" is being claimed, but that no functional device nor hardware is claimed nor described in the specification, and that the claimed "system" could embody purely software components.

Figures 1-2 of the instant application illustrate a system including functional (computer) devices (e.g., apparatuses). Furthermore, the specification describes hardware in the form of (computer) processors. *See* the filed specification as a whole, and in particular, page 4 (second full paragraph) (describing memory storing software code, that when executed by a processor, performs procedures/methods in accordance with the disclosure). Amended claims 26-50 are directed to an apparatus, wherein the apparatus of independent claim 26 includes the

aforementioned processor and memory. Such an apparatus is statutory. Accordingly, Applicants request withdrawal of the section 101 rejection.

Claim Rejections under 35 U.S.C. § 102

Claims 1-17, 20-42, and 45-51 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. pub. no. 2003/0086425 to Bearden et al. ("Bearden"). This rejection is traversed.

For a rejection under section 102 to be proper, a reference must teach every aspect of the claimed invention either explicitly or impliedly, and any feature not directly taught must be inherently present; no question of obviousness is present. MPEP § 706.02 (V.). Based on such a standard, Bearden fails to anticipate the claims under section 102 for at least the reasons discussed below.

Amended claim 1 recites, among other features, "wherein said second stage comprises providing, in relation to the list of said autonomous systems crossed by said traffic of said user, at least one parameter including a percentage of use of the autonomous systems." These features are similar to features previously recited in claim 16. In the Office Action at pages 6-7, in the context of rejecting claim 16, the Office relied on Bearden at paragraph [0225] to allegedly disclose such features.[1] Bearden at paragraph [0225] describes endpoint software that must be installed on a computer to send and receive synthetic traffic to collect and report statistics about traffic to a call control module regarding a synthetic call between two endpoints in a network, E1 and E2. Even assuming (without admitting) that the portion of the network encompassed by endpoints E1 and E2 may appropriately be analogized to the recited autonomous systems (crossed by said traffic of said user), Bearden is silent with respect to providing at least one parameter including a percentage of use of the autonomous systems. Instead, Bearden at paragraph [0225] merely describes that the endpoints compute delay, jitter, and packet loss statistics for each call. A computation of delay, jitter, and packet loss does not (explicitly or implicitly) disclose features related to providing at least one parameter including a percentage of

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1 Applicants note that claim 16 recited language related to at least one parameter chosen from an enumerated listing of alternatives. Applicants submit that Bearden is wholly silent with respect to the parameter recited in amended claim 1.

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use of autonomous systems. Features related to providing at least one parameter including a percentage of use of autonomous systems are not inherent in Bearden either. Accordingly, Bearden fails to anticipate claim 1 for at least the foregoing reasons.

Amended independent claims 26 and 51 recite features similar to those described above with respect to claim 1. Accordingly, claims 26 and 51 are allowable for at least the same reasons as their respective base claims.

Claims 2-17, 20-25, 27-42, and 45-50 each depend from at least one of claims 1 and 26, and are allowable for at least the same reasons as their respective base claims. The dependent claims are further allowable in view of the features recited therein.

For example, claim 8 recites "configuring said software agents to analyze the operating status of the respective router in terms of . . . available memory." The Office Action at page 5 contends that Bearden at paragraph [0092] describes features related to configuring software agents to analyze an operating status of a respective router in terms of CPU load and available memory. Applicants disagree. Instead, Bearden at paragraph [0092] merely describes measuring load for a given device in terms of incoming and outgoing octets on all interfaces, the number of discarded packets on all interfaces, and CPU usage. Bearden is wholly silent with respect to analyzing an operating status of a respective router in terms of available memory. Accordingly, Bearden fails to anticipate claim 8 for at least these additional reasons.

Claim 17 recites "wherein said provided at least one parameter is expressed as an average value." The Office Action at pages 6-7 cites to Bearden at paragraph [0225] as allegedly disclosing the features recited in claim 17. Applicants disagree that Bearden at the cited paragraph (or any paragraph, for that matter) describes the above-noted features recited in claim 17. Bearden at paragraph [0225] merely describes that endpoints E1 and E2 execute calls and report call delay, jitter, and packet loss statistics back to a control module. Reporting call delay, jitter, and packet loss statistics does not teach expressing a(n at least one) parameter as an average value. Accordingly, Bearden fails to anticipate claim 17 for at least these additional reasons.

Claim Rejections under 35 U.S.C. § 103

Claims 18-19 and 43-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bearden in view of U.S. pub. no. 2002/0169857 to Martija et al. ("Martija"). This rejection is traversed.

Notwithstanding whether Martija is properly combinable with Bearden, Martija fails to remedy the deficiencies of Bearden with respect to claims 1 and 26. Claims 18-19 and 43-44 each depend from at least one of claim 1 and 26, and are therefore allowable for at least the same reasons as their respective base claims.

CONCLUSION

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same.

Respectfully submitted,

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Dated: June 22, 2009   By: /Gary D. Fedorochko/ _____

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